IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO :17489 of 2006

Dated: 25th August 2006.

Between:

M/s Voltas Limited, R.P. Road, Secunderabad

..... PETITIONER

AND

The Assistant Commissioner of (CT), LTU,
Secunderabad Division, Hyderabad and others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NO.17489 OF 2006

ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner-limited company is a registered dealer under the A.P.V.A.T.Act, 2005 and an assessee on the rolls of the 1st respondent. The petitioner is engaged in the business of manufacture and sale of air conditioners, pesticides, etc. Part of the activity of the petitioner, it is claimed, is falling under the activity of a works contract defined under Section 2(45) of the VAT Act. Dealers, who are carrying on such activity of works contract, are liable for a tax by virtue of levy, under Section 4(7)(a) of the Act. Sub-sections (b)(c)(d) of Section 4(7) deal with various types of contracts or contractors, as the case may be, and the contractors are given an option to pay the tax by way of composition. There was an amendment to Sub-section (7) by Act No.23 of 2005 with effect from 29-08-2005. As a consequence of such an amendment, the activity of the petitioner was required to be treated differently, than it was treated prior to the amendment, for the purpose of tax (the details of which may not be necessary for the present purpose). Pursuant to the amendment, notices were issued by the respondents proposing to levy tax based on the amended provision insofar as the activity of the petitioner for the months September and October 2005, is

concerned. Apart from the proposal to levy tax, it was proposed to levy penalty and interest also. The petitioner filed its objections to the said proposal of the department. The objections of the petitioner were rejected. The proposal was confirmed by the 1st respondent by his proceedings dated 30-01-2006. Aggrieved by the same, the petitioner preferred an appeal to the 2nd respondent and along with the appeal, the petitioner preferred an application for stay of recovery of the penalty and the interest. It is the case of the petitioner that the entire amount of tax is already paid. The said application of the petitioner was rejected by the 2nd respondent by his order dated 23-05-2006. Aggrieved by such rejection of the stay application, the petitioner carried the matter in further revision to the

3rd respondent, unsuccessfully. The revision was dismissed by an order dated 05-08-2006. Hence, the present writ petition.

Heard the learned Government Pleader for Commercial Tax.

In the circumstances, we are of the opinion that in view of the pendency of the appeal of the petitioner before the 2nd respondent, the collection of penalty and interest be stayed during the pendency of the said appeal.

In the result, the writ petition is disposed of with the above direction at the stage of admission.

J.Chelameswar, J

D.Appa Rao, J

25th August 2006
mrk